

1901-012 Chancery Causes: P. H. Allen &c vs Annis Litton &c  
Lee Co.

Noel, Gilly, Gilley, Howard, Skaggs, Johnson, Parks

CA. Estate Dispute  
T. Property

To the Hon. A. A. W. Sheen, Judge of the Circuit  
Court of Lee County, Virginia.

Your complainants, P. H. Allen and E. L. Noel,  
complaining sheweth unto the Court that C  
Howard in his life was seized and possessed of  
certain real estate lying in the County of Lee in  
the town of Pennington Gap, and known as the  
Howard Reserve, and being <sup>seized and</sup> possessed the said  
C. B. Howard died intestate leaving R. J. Skaggs  
his Howard, Marybel Johnson ne Howard, E. O. Howard, now Johnson,  
J. Milton Howard, and the children of his deceased daughter  
Mary Gilley ne Howard, to wit: C. E. Parks ne Gilley, Emory, bred,  
T. P. Gale and Annie Gilley, his only heirs at law.

By an order of your Honors Court entered on the  
14 day of May 1873, the said lands were  
partitioned among the said heirs of said, and in said  
partition Lot No 2, was assigned and allotted to the  
said children of the aforesaid Mary Gilley (deceased)  
which said lot No 2, was one child's part in the said  
estate of the said C. B. Howard, and which said  
lot is bounded as follows, to wit: Part No 1 by Joslyn Avenue  
on the north, by the lands of P. H. Allen on the east and west, and by  
the right of way of the L. & N. R. R. Co. on the south, Part No. 2 on  
the north by Morgan Avenue on the east by the lands of E. O. Johnson,  
on the south by Joslyn Avenue, and on the west by that part  
of the Howard reserve known as the Brownlie property, Part No.  
3 is lies north of Morgan Avenue, and is bounded on the west  
by the E. O. Buldo property, on the north by <sup>the lands of the</sup> Pennington Gap  
improvement company, and on the south by lands of Doctor  
Johnson: That since the aforesaid Lot No 2, was laid off and  
assigned to the said children of the said Mary Gilley (deceased)  
Your complainant P. H. Allen has purchased and now



owns the undivided interest of the said E. E. Parkman Gilley and your other complainant E. L. Noel has purchased the undivided interests of the said Emory Gilley and breed Gilley in said Lot No 2 of said Howard Reserve. The said Annis Gilley who is now married to one Bradley Litter has contracted to sell her undivided interest to the said E. L. Noel, but has not as yet conveyed the same by proper deed. The said Tip Gilley and Isaac Gilley are still infants under the age of twenty one years.

Your complainants further state that from the situation and character of the said lot of land, that they do not believe that it can be well partitioned among the parties entitled thereto, but that if the same be ~~for~~ susceptible of partition they desire that it be so partitioned, so that the said interest of your complainant R. H. Allen be adjoining his other lands, and that the two shares of the said E. L. Noel and the one share of the said Annis Litter be laid off together provided that the same can be done without injury to the other parties interested therein. But if it cannot be so divided, then your complainants desire that the same may be sold and the proceeds divided among the adults and infant parties according to their respective rights; the shares of the infants to be held as directed by the statute in such case made and provided. Should the property not be divisible in kind, complainants believe and here state that the interests of those who are entitled to the said real estate, or its proceeds, will be promoted by a sale of the whole of the same, or by an allotment of part and sale of the residue. For as much, therefore, as your complainants are remediless in the premises, save by the aid of a court of equity, they pray that the said



1 Annis Litter and Bradley Litter, Tip Gilley and Gale  
2 Gilley, may be made parties defendants to this bill  
3 and required to answer the same, but not up-on-oath,  
4 the oath being hereby waived, the said adults in their  
5 own proper person, and the infants by guardian ad  
6 litem: that a proper guardian ad litem be appointed in  
7 this cause for the said infants who shall answer this bill;  
8 that proper process issue; that the said real estate be  
9 divided among the parties entitled thereto, or else that it be  
10 sold in its three separate parts, and the proceeds divided,  
11 in case it be indivisible in kind; that all proper orders  
12 and decrees may be made, accounts taken and enquiries directed  
13 and that all such other, further and general relief as in the  
14 premises may be just and right may be granted. And your  
15 Complainants will ever pray, etc.

16 J. C. Noel p. q.



Plffs Costs  
 Clerk 10.81  
 Tax 1.50  
 Shff 3.00  
 atty 15.00  
 G.A.L. 5.00  
 Printer 5.00  
 Comrs 5.00  
 \$45.31

O.A. Allen & E.L. Noel  
 vs Bill du Chene  
 Annis Litter et al.  
 1901 2nd Feby rules Bill  
 filed sums executed as to  
 home debts & Order of  
 Publication as to nonresi-  
 dent debt & D.N.  
 " 1st March rules taken  
 the last Monday in  
 Feby D.P. Complete D.N.  
 Confd & Cause set for  
 hearing.

Nov Term 1901 Decree  
 final O.B. No 7 Page  
 21.

Plffs Costs  
 Clerk 10.81  
 Tax 1.50  
 atty 15.00  
 Shff 3.00  
 G.A.L. 5.00  
 Comrs 5.00  
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 \$45.31

Plffs Costs  
 Clerk 10.81  
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 atty 15.00  
 G.A.L. 5.00  
 Comrs 5.00  
 Printer 5.00  
 \$45.31



Answer of Gale Gilley, and Tip Gilley, By \$\$\$\$\$\$  
H.O. Ballou, their gaurdian ad litem, to a bill of complaint  
exhibited against themselves and others,

P. H. Allen and E. L. Noel In the Circuit  
Court of Lee County,

These respondents, saving all just exceptions, & . C . for  
answer to the said bill, say that being infants, they submit  
their rights involved in the same to the protection of the  
Court.

And having answered, they pray to be dismissed, & . C .

H. O. Ballou  
Gaurdian, ad litem.

Sworn to before me by H. O. Ballou this Feby 18<sup>th</sup> 1901  
A B Munsey Clerk



P. H. Allen & E. L. Noel

vs J. M. Chan.

Ann's Letter et al

Answer by Guardian ad litem

Filed Feb'y 18<sup>th</sup> 1901

A. B. Munsey Clerk



P. H. Allen & E. L. Noel Plffs,

vs

Annis Litton et al.

} In Chancery.

This cause came on again this day to be further heard upon the papers formerly read therein, and the report of commissioner J. C. Noel, filed this day showing he had made deeds to W. T. Gilley, P. H. Allen and E. L. Noel as directed, which reports and deeds are unexcepted to, and was argued by counsel. On consideration of all which and for reasons appearing to the court; it is adjudged ordered and decreed that said report and deeds are approved confirmed and adopted. And this cause is stricken from the docket.



P. H. Allen & E. L. Noel  
vs Decree Final  
Annis Lillor et al  
Entered on 14th Oct.  
Ms 7 Page 21

Entered this 12 day  
of Nov. 1901.

H. A. Co. Sherr

Judge.



P. H. Allen et al

vs

} Dr & her exr.

Annis Lillon et al

This Cause came on this 3<sup>rd</sup> day of June 1901, to be again heard upon the papers formally read therein, and upon the the report of E. W. Thompson, J. M. Andis and W. G. Burgin, Special Commissioners, and was argued by counsel.

Upon consideration of all which, and it appearing that said report had been filed for at least 10 days before the first day of this term, and the same is unexcepted to, it is therefore adjudged ordered and decreed that said report be, and is hereby, approved, accepted, and adopted.

And it appearing to the Court from said report that the land mentioned in the Complainant's bill, is not susceptible of partition in kind, it is therefore adjudged ordered and decreed that the same be sold in three separate parcels, to wit: that lying on the North side of Morgan Avenue, to itself; that lying between Morgan and Goslyn Avenue to itself, and that lying South of Goslyn Avenue to itself; and it is further adjudged, ordered, and decreed, that J. C. Noel, who is hereby appointed a Special Commissioner of this Court for the purpose, shall at some Court-day of the County Court for Lee County



at the front-door of the Court-house thereof,  
after having advertised the time, terms and  
place of sale for at least 30 days, by posting  
notices thereof at the front-door of said  
Court-house, at Pennington Gap, and  
Dryden, proceed to sell said land, upon  
a credit of one and two years time, except  
that enough out of the proceeds of said  
sale be paid. It may be necessary to pay the costs  
of this suit and commission of sale, shall be paid down,  
and that said J. H. Noel will take the  
bonds of the purchasers of said land with  
good and sufficient surety, payable to  
himself as Commissioner. Before advertising said  
sale, the said Noel shall enter into bond with  
good and sufficient surety in the sum of \$300<sup>00</sup>  
for the faithful performance of his duties as such com-  
missioner. He will report his action to some  
future term of this Court; and this cause is  
continued.

W. H. Allen

W. H. Allen  
James C. Allen

James C. Allen

Entered and  
A. B. No. 6. P. O. P. 2.

Entered

5/10



P. H. Allen and E. L. Noel,

vs

Annis Litton et al

In Chancery.

This cause came on this the 5<sup>th</sup> day of March 1901 to be heard upon the plaintiffs bill and the papers filed therewith, and the answer of Gale Gilley and Tip Gilley the infant defendants by N. O. Ballou their guardian ad litem, who was appointed by said Court to defend them in this suit, and it appearing that all the defendants had been duly served with process according to law, the adults and the infant-Gale Gilley by personal process and Tip Gilley who is a non-resident - by proper order of publication, and the adult defendants not appearing to plead, answer or demur the bill is taken as confessed as to them.

And it appearing further, that said plaintiffs are entitled to have the lands mentioned and described in the plaintiffs bill partitioned in ~~the~~ if the same can so be done, and if not that the interest of all parties thereto will be promoted by a sale of the said lands, and a division of the proceeds divided among those entitled thereto, and that there are <sup>no</sup> creditors of the said parties ~~will be~~ whom will be prejudiced by said sale, it is therefore, adjudged ordered and decreed that: W. E. Thompson, J. M. Andis and W. G. Bourquin, who are



hereby appointed special commissioners  
for that purpose, will go upon the said  
lot or parcel of land known as lot-1102,  
in the partition of the Howard Reserve, ~~the~~  
~~having been sworn for the purpose of~~  
in the town of Pennington Gap, in said  
County of Lee, and if the same can be  
conveniently done, will partition the said  
land among those entitled to the same  
that is to say that they will lay off and  
assign to P. A. Allen a one sixth interest  
in said land, ~~interest~~ <sup>interest</sup> ~~if possible will~~  
~~be laid off next to~~ if the same can be  
done without material injury to the other  
parties in interest will be laid off joining  
the lands of the said P. A. Allen; they will  
lay off and assign to E. L. Noel three sixths  
of the entire lands, since she has acquired  
by deed since the institution of the suit  
the interest of Annis Linton in said lands,  
these three sixths of said land the said  
Commissioners will lay off together, if the  
same can be done without material injury  
to the other parties in interest; and the residue  
of said land the said Commissioners will  
assign to the infant defendants, Pip and  
Gale Gilley, respectively. In making  
said partition the said Commissioners  
shall have due regard to situation, accessibility,  
to streets, location, and quality of soil.  
If the said lands are not susceptible



of partition the said commissioners will report  
that fact; The said commissioners will  
report their action to some future term  
of this court and this cause is continued  
..



P. H. Allen & E. L. Noel  
vs Deere No. 6.

Annis Litton et al  
Entered on Levy Order  
Book No 6 Pages  
492 & 493

Entered this 5 day  
of March 1901.

Haw Stuen  
Judge.



To the Hon. H. A. W. Shen, Judge of the  
Circuit Court for Lee County, Virginia.

Your undersigned Special Commissioners,  
who were appointed by a decree of your honor  
court entered on 5 day of March 1901, in the  
Chancery Cause of P. H. Allen and E. L. Noel  
vs Anna Latta et al. to go upon the lot or  
parcel of land known as Lot No. 2 in the  
partition of the "Howard Reserve" which is  
situated in the town of Pennington Gap in  
said County of Lee, and to partition the same  
among the parties in interest thereto, provided  
the same could be conveniently done, allotting  
the said lands as follows, to wit: to P. H. Allen  
one sixth, E. L. Noel three sixths, Gale and  
Tip Gilley infants each one sixth, with in-  
structions to lay off the interests of P. H.  
Allen adjoining his lands and the interests  
of E. L. Noel together, if the same could  
be done without material injury to the other  
and if said lands could not be partitioned to report that fact.  
parties in interest<sup>ly</sup> beg leave to report that  
in pursuance to said decree they went upon  
said land on the 30 day of March 1901, to execute  
and perform their duties under the requirements  
of said decree, and attempted to partition the  
said lot of land according to the direction given  
them by the court; but upon viewing the  
situation, and finding the piece of land  
cut into three unequal portions, by two  
wide streets, they found it impossible  
to divide said land according to the right  
of all parties concerned without greatly ex-



if not entirely destroying the the value of the whole. One part which is not more than one sixth in value lies north of Morgan Avenue, another which is in value worth a little more than half the whole tract lies between Morgan and Joslyn Avenues, and the residue which is perhaps in value  $\frac{2}{3}$  of the whole lies south of Joslyn Avenue, making it impossible to divide the same, without stringing out each share clear through the three pieces of or parts from the right of Way of the Louisville & Nashville Railroad, to the Improvement Company's land. which would make ~~each~~ <sup>each</sup> share about 12 feet wide, and divided into three pieces.

Therefore your Commissioners report that the lands cannot be divided in kind among the different parties without greatly injuring the rights of all the parties. They recommend that the land be sold and that the same be offered for sale in three parts, that is, that that part North of Morgan Avenue be sold to itself, that that part lying between Morgan and Joslyn Avenues be sold to itself, and that the part south of Morgan Avenue be sold to itself, and that the proceeds of the sale be divided among the parties <sup>according to their respective interests</sup>. All of which is respectfully submitted. This 20 day of March 1887

O. E. Thompson, Secy.

J. M. Arditt

W. G. Burgess



P. H. Allen and E. L. Naeck  
vs. Comm.  
Annis G. Allen  
Filed May 24<sup>th</sup> 1901  
A. B. Munsey  
Clerk

Costs:  
W. E. Thompson \$1.00  
W. G. Burgeon 1.00  
J. M. Andis 1.00  
Copy of Deed  
Partition

To the Hon H.A. Skeen, Judge of  
the Circuit Court for Lee County.

The undersigned, who was appointed  
by a decretal order entered in the  
Chancery Cause of P.H. Allen and E.L. Noel  
vs Annis Lilton et al. on the 9 day of Nov  
1901 in your honor court, a commissioner  
to make W.T. Gilley P.H. Allen and E.L.  
Noel each a deed for their respective  
purchases as set out in said decree,  
begs leave to report that he has executed  
said deeds, as directed by said decree,  
and the same is herewith filed for your  
honor inspection. All of which is  
respectfully submitted.

J.B. Noel Commissioner.

Nov. 12, 1901.



P. H. Allen & E. L. Nock  
Commissioners  
vs Report of Deeds made

Annis Litteral et al

Filed Nov 12<sup>th</sup> 1901

A. B. Munsey Clerk

In the Clerk's Office of the Circuit Court of the County of  
*Lee*

against

*P. H. Allen et al* Plaintiff &

*In Chancery*

*Annis Litton et al* Defendant &

This day

*J. L. Noel*

personally appeared

before me,

*A. B. Munsey*

Clerk of the said Court,

and being duly sworn, made oath that

*Lip Lilly*

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this *14th* day of *January*  
*1901*.

*A. B. Munsey Clerk*



*P. H. Allen et al*

US. { AFFIDAVIT FOR ORDER  
OF  
PUBLICATION.

*Annie Litten et al*

*J. L. Noel* p. q.  
Filed January 14<sup>th</sup> 1901  
*A. B. Munsey* Clerk

In the Clerk's Office of the Circuit Court of the County of  
*Lee* on the *14<sup>th</sup>* day of *January* 1901.

*P. H. Allen and E. L. Noel*  
against

Plaintiff &

*In Chancery*

*Annis Litton, Bradley Litton*  
*Lip Gilley and Gale Gilley*

Defendant &

The object of this suit is to obtain a decree for the partition, or sale of that certain tract or lot of land situated in the town of *Pennington Gap*, *Lee County*, Virginia, which was laid off and assigned to the children of *Mary Gilley* deceased in the partition of the lands of *Isaac Howard* deceased.

And an affidavit having been made and filed that the defendant *Lip Gilley* is

a *he* not resident of the State of Virginia, it is ordered that *he* do appear here within *fifteen days* after due publication hereof, and do what may be necessary to protect *his* interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the *Pennington Gap News*, and that a copy be posted at the front door of the court-house of this *County* on the first day of the next term of the ~~Circuit~~ Court.

A copy—Teste:

*J. L. Noel* P. Q.

*A. B. Munsey* Clerk.



P. H. Allen et al

vs. }

ORDER OF  
PUBLICATION.

Annis Litton, et al.

Virginia Lee County Co-vent  
 I Dr B Munsey Clerk of the  
 Circuit Court for Lee County  
 Virginia do hereby certify  
 that I posted a copy of the  
 within order of publication  
 at the front door of the Court  
 House of Lee County on  
 the 18th day of February  
 1901 that being the 1st day  
 of the County Court of  
 said County.  
 Given under my hand  
 this the 19th day of Feb'y  
 1901.  
 Dr B Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon, *James Little, Bradley*  
*Little Lip Willy, v. Sale Willy*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the  
said court, on the *3rd* Monday in *February* 19*01* ~~19~~, to answer a bill in  
chancery exhibited against *them* in our said court by *P. H.*  
*Allen and E. L. Noel*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,  
the *14th* day of *January* 1901, and in the 12*5th* year of the Common-  
wealth.

A copy, Teste:

*A. B. Munsey*  
*A. B. Munsey Clerk*

Clerk.

~~Clerk.~~



VS.

SUBPOENA  
IN CHANCERY.

p. q.

To

Rules.

Court.

Not Executed as to  
Lip. Gilley not  
found in the  
county Jan 24-1801  
D. P. City S S  
for 17 miles  
S. E

4  
The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *James Litton, Bradley  
Litton, Lip Gilly & Sale Gilly*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the  
said court, on the *3rd* Monday in *February* 1901, to answer a bill in

chancery exhibited against *them* in our said court by *P. H. Allen*  
*and E. L. Noel*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,  
the *14th* day of *January* 1901, and in the 128<sup>th</sup> year of the Common-  
wealth. A copy, Teste: *A. B. Munsey* Clerk.

Clerk.



Executed January 24<sup>th</sup> 1901 by Delivering an  
 attested office copy of the within Subpoena  
 to Gale Gibley also further Executed on  
 January the 28 1901 by Delivering an attested  
 office copy of the within Subpoena to  
 Annis Litton and also by Delivering an attested  
 office copy of the within Subpoena to  
 Bradley Litton  
 C. P. Ely D.S.  
 for W. J. Mileham S. L. &

P. H. Ollers et al

VS.

SUBPOENA  
IN CHANCERY.

Annis Litton et al

J. C. Noel p. q.

To 2nd February Rules.

Exigent Court.

### **Order of Publication.**

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In the Clerks office of the Circuit Court of Lee County on January 14th 1901.

P. H. Allen and E. L. Noel. vs. Annis Litton, Bradley Litton, Tip Gilly and Gale Gilley.

The object of this suit is to obtain a decree for the partition or sale of that certain tract or lot of land, situated in Pennington Gap, Lee County Virginia, which was laid off and assigned to the children of Mary Gilly deceased in the partition of the lands of Chad Howard deceased. And an affidavit having been made and filed that the defendant Tip Gilly is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the Pennington Gap NEWS, and that a copy be posted at the front door of the court house of this county on the first day of the next term of the County Court. A copy—Teste:

J. C. Noel, P. Q. A. B. Muncy, Clerk.

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I W. K. Hopkins, Editor  
of the Sunnington says that  
having certified that the within  
order of publication of  
Q. N. Allen and E. J. Wood vs. Annie  
L. Allen and others was published  
for four consecutive weeks  
in the Sunnington says that  
a weekly paper was published  
in Lee County Va, beginning  
January 25th and ending July 1st  
the 15th 1901, This month 5th 1901  
W. K. Hopkins, Editor  
the News"

L. H. Allen & others

no { order of pub<sup>l</sup>  
entire

Allen & others